

RECORDING REQUESTED BY:
Port of Stockton
2201 West Washington Street
Stockton, California 95201

DOC # 2003-224097
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Recorded in Official Records
County of San Joaquin
GARY W. FREEMAN
Assessor-Recorder-County Clerk
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WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Sacramento Office
8800 Cal Center Drive
Sacramento, California 95826
Attention: Anthony J. Landis, P.E., Chief
Northern California Operations,
Office of Military Facilities

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

Former Naval Computer and Telecommunications Station,
San Diego Detachment, Rough and Ready Island, Stockton, California "NCTS Stockton"

This Covenant and Agreement ("Covenant") is made by and between the United States of America, acting by and through the Department of the Navy (the "Covenantor" or "Navy"), the Port of Stockton ("Port"), and the California Department of Toxic Substances Control ("DTSC") and the California Regional Water Quality Control Board, Central Valley Region ("RWQCB") (collectively, the "State"). The Covenantor is the current owner of the property, situated in the city of Stockton, county of San Joaquin, state of California ("Property"), and described in Exhibit C-1 and depicted in Exhibit C-2 (attached and incorporated herein by this reference).

The State has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of potential risk related to the

possible presence on the land of hazardous materials, as defined in California Health & Safety Code ("H&SC") Section 25260, and enters into this Covenant in accordance with H&SC Sections 25222.1 and 25355.5 and California Civil Code Section 1471(c). This Covenant, entered into pursuant to H&SC Section 25222.1, shall be exclusively for the purpose of protecting public health and safety and shall convey no interest in real or other property to the State.

The Covenantor, the Port, and the State, collectively referred to as the "Parties," therefore intend that the use of the Property be restricted as set forth in this Covenant, in order to protect human health, safety and the environment.

ARTICLE I STATEMENT OF FACTS

1.01 The Property, totaling approximately 500 acres, is described and depicted in Exhibits C-1 and C-2. The Property is located on the Rough and Ready Island, in the county of San Joaquin, state of California.

1.02 The Property will be transferred to the Port by the United States, acting by and through the Department of the Navy, under early transfer authority pursuant to Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA," 42 U.S.C. 9601 et seq.). The Port and the Navy have entered into an Environmental Services Cooperative Agreement, pursuant to which the Navy is providing funding to the Port, and the Port is completing all remedial actions at the Property, as required by the State. Under early transfer authority, the State must be satisfied that, among other things, restrictions will be placed on Property that assure that public and environmental safety will be protected while said remedial actions are completed by the Port. For these reasons, the



Covenantor and the Port have chosen to enter this Covenant with the State. Participation in this Covenant will assure that public and environmental safeties are protected as the Port completes all response and corrective actions, including any long-term obligations, at the Property.

1.03 The Port and the State entered into a Consent Agreement, on file with DTSC, RWQCB and the Port, on July 30, 2003. The purposes of the Consent Agreement include establishing the process and timetable for the completion of the response and corrective actions, and any long-term obligations, required at the Property.

1.04 Based on the draft Remedial Investigation Reports, heavy metals, solvents, and pesticides are present in the soil at concentrations that would pose a threat to public health or the environment if left unremediated. Based on the fact that remedial actions will be required at the Property under the Consent Agreement, the State, Covenantor, and Port have concluded that use of the Property as a residence, hospital, school for persons under the age of 18, or day care center would entail an unacceptable risk to the users or occupants of such property operated or occupied. The State, Covenantor, and Port have further concluded that the Property, as remediated and operated or occupied subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if limited to the Restrictions enumerated in Article IV, herein.

ARTICLE II

DEFINITIONS

2.01 DTSC. "DTSC" means the Department of Toxic Substances Control and includes its successor agencies, if any.

2.02 RWQCB. "RWQCB" shall mean the Regional Water Quality Control Board, Central Valley Region, and shall include its successor agencies, if any.



2.03 State. "State" shall mean DTSC and RWQCB. DTSC is acting as lead regulatory agency and the RWQCB as support agency, except with respect to the petroleum underground storage tanks and petroleum contaminated sites for which RWQCB is the lead regulatory agency and DTSC is the support agency. The responsibilities of the lead and support regulatory agencies are set forth in the Memorandum of Understanding between DTSC, the State Water Resources Control Board and the Regional Water Quality Control Boards for Cleanup of Hazardous Waste Sites, dated August 1, 1990.

2.04 Owner. "Owner" shall include the Covenantor's successors in interest, and their successors in interest, including heirs and assigns, during their ownership of all or any portion of the Property.

2.05 Covenantor. "Covenantor" shall mean the United States acting through the Department of the Navy.

2.06 Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.07 Effective Date. "Effective Date" shall mean the calendar day next following the day upon which title to the Property is acquired by the Owner.

2.08 Property. "Property" shall mean the approximately 500 acres of Rough and Ready Island, as described and depicted in Exhibits C-1 and C-2.

ARTICLE III

GENERAL PROVISIONS

3.01 Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively, "Restrictions"), subject to which the



Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC Sections 25222.1, 25355.5(a)(1)(C), and Civil Code Section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) shall apply to and bind all subsequent Owners and Occupants of the Property, (d) is for the benefit of, and is enforceable by the State; and (e) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02 Binding upon Owners, Occupants, and Lessees. Pursuant to H&SC Sections 25222.1, 25355.5(a)(1)(C), this Covenant binds all Owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the Owners, heirs, successors, and assignees. Pursuant to Civil Code Section 1471(b), all successive Owners of the Property are expressly bound hereby for the benefit of the State.

3.03 Written Notification of Hazardous Substance Release. The Owner shall, prior to the sale, lease, or rental of the Property, give written notice to the subsequent transferee that a release of hazardous substances has come to be located on or beneath the Property, pursuant to H&SC Section 25359.7. Such written notice shall include a copy of this Covenant.

3.04 Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases entered into after the Effective Date of this Covenant for any portion of the Property for which they are in effect and to which they are applicable.

ARTICLE IV RESTRICTIONS

4.01 Restrictions.

Effective upon the date of execution of this Covenant as evidenced by entry of all



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signatures on the last signature pages hereto, the Property may not be put to any of the following uses:

- (1) A residence, including any mobile home or factory built housing, used as residential human habitation.
- (2) A hospital for humans.
- (3) A public or private school for persons under 18 years of age.
- (4) A day care center for children.
- (5) Any use of the Property in a manner that causes the covering or disturbing of groundwater monitoring wells, or any use of the Property in a manner that restricts access to groundwater monitoring wells.
- (6) There shall be no alteration of groundwater conditions within the Property, through activities such as construction of any well, extraction, use or consumption of groundwater from wells within the boundary of the Property, use of any groundwater within the boundary of the property, construction or creation of any groundwater recharge area, unlined surface impoundments or disposal trenches, unless specifically approved by the State.
- (7) Any use that would restrict investigation activities, remedial actions, or long term maintenance and operations.

4.02 Soil Management.

- (1) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a prior written plan approved by the State.
- (2) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (3) The Owner or Occupant shall provide the State written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property.

4.03 Access for State. The State shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this



Covenant as deemed necessary by the State to protect the public health or safety or the environment. The State shall to the extent possible provide advance notice to, and coordinate with, the Owner, lessee, or sublessee of the Property, as appropriate, regarding access requirements.

ARTICLE V ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the State to obtain injunctive relief prohibiting commencement or continuation of any uses or activities restricted by this Covenant as provided by law. Violation of this Covenant by the Covenantor, Owner or Occupant may result in the imposition of civil and/or criminal remedies including nuisance or abatement against the Covenantor, Owner or Occupant as provided by law. Violation of this Covenant shall be grounds for the State to seek or file enforcement actions as provided by law.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01 Variance. The Owner, or with the Owner's consent, any Occupant, may apply to DTSC for a written variance from the provisions of this Covenant. DTSC will grant the variance only after finding that such a variance would be protective of human health, safety and the environment. Such application shall be made in accordance with H&SC Section 25233.

6.02 Termination. The Owner, or with the Owner's consent, any Occupant may apply to DTSC for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC



Section 25234.

6.03 Term. This Covenant shall continue in effect in perpetuity unless ended in accordance with the Termination paragraph above, by law, or by the State in the exercise of its discretion.

ARTICLE VII MISCELLANEOUS

7.01 No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02 Recordation. The Port shall record this Covenant, with Exhibits C-1 and C-2, in the county of San Joaquin within ten (10) days of the Port's receipt of a fully executed original.

7.03 Notices. Whenever any person gives or serves any notice ("notice" as used here includes any demand or other communication with respect to this Covenant), each such notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor: Commander
EFA West
Naval Facilities Engineering Command
Pacific Plaza
2001 Junipero Serra Boulevard
Suite 600
Daly City, California 94014-1976

To Port: Port of Stockton
2201 West Washington Street
Stockton, California 95203
and
P.O. Box 2089



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Stockton, California 95201
Attention: Richard Aschieris
Port Director

To DTSC: Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826
Attention: Anthony J. Landis, P.E.
Chief,
Northern California Operations
Office of Military Facilities

To Water Board: Regional Water Quality Control Board
Central Valley Region- Sacramento Office
3443 Routier Road, Suite A
Sacramento, California 95827
Attention: Thomas R. Pinkos
Executive Officer

Any party may change its address or the individual to whose attention a notice is to be sent by giving written notice in compliance with this paragraph.

7.04 Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included.

7.05 Exhibits. All exhibits referenced in this Covenant are deemed incorporated into this Covenant by reference.

7.06 Section Headings. The section headings set forth in this Covenant are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Covenant.

7.07 Representative Authority. The undersigned representative of each Party to this Covenant certifies that he or she is fully authorized to enter into the terms and conditions of this Covenant and to execute and legally bind that party to this Covenant.



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7.08 Counterparts. This Covenant may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

7.09 Statutory References. All statutory references include successor provisions.

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IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: UNITED STATES OF AMERICA, ACTING THROUGH THE
DEPARTMENT OF THE NAVY

By: N. Young Aranita
N. Young-Aranita, Captain, U.S. Navy

Title: Commanding Officer, Naval Computer and Telecommunication Station,
San Diego

Date: 18 SEP 03

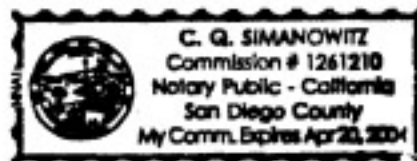
STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On this 18th day of SEPTEMBER, in the year 2003,
before me C. Q. SIMANOWITZ, personally appeared
N. YOUNG-ARANITA

personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature C. Q. Simanowitz



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PORT OF STOCKTON

By:

Richard Aschieris
Richard Aschieris

Title: Port Director

Date: Sept. 22, 2003

STATE OF CALIFORNIA)

COUNTY OF San Joaquin)

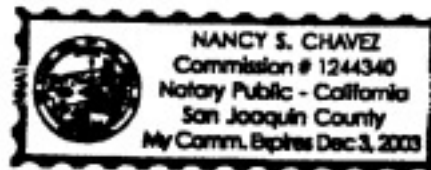
On this 22nd day of September, in the year 2003,
before me Nancy S. Chavez, personally appeared
Richard Aschieris

personally known to me (or ~~proved to me on the basis of satisfactory evidence~~) to be the
person~~(s)~~ whose name~~(s)~~ is /~~are~~ subscribed to the within instrument and acknowledged to
me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that
by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of
which the person~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Nancy S. Chavez



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DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: Anthony J. Landis
Anthony J. Landis

Title: Chief, Northern California Operations
Office of Military Facilities

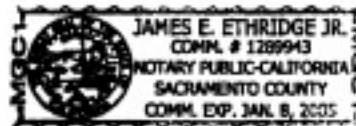
Date: 9-19-03

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)

On this 19th Sep 2003 day of Sept 2003, in the year 2003,
before me James E. Ethridge Jr. personally appeared
Anthony J. Landis
personally known to me (or proved to me on the basis of satisfactory evidence) to be the
person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature James E. Ethridge Jr.



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REGIONAL WATER QUALITY CONTROL BOARD,
CENTRAL VALLEY REGION

By: _____

Thomas R Pinkos

Thomas R. Pinkos

Title: Executive Officer

Date: _____

9/18/03

STATE OF CALIFORNIA)

COUNTY OF SACRAMENTO)

On this 18th day of SEPTEMBER, in the year 2003,
before me RONI DICKERSON, personally appeared

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

Roni Dickerson



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Exhibit C-1

Description of Phase III Transfer Parcels

PARCELS

Phase III Parcels 5, 7, 16, 17, 18, 23, 34, 70, 89, 92, 120, 138, 139, 140, 141, 142, 145, 150(3), 153, 154, 155, 156, 157, 158, 161, 163, 164, 165, 170, 176, 177, 178, 181, 182, 183, 185.

#	IR Site	Description	Contamination
1	Site 2	Former Battery Acid Disposal Site	Pesticides, VOCs, TPH, Metals
2	Site 3	Firefighter Training Area	VOCs, SVOCs, Pesticides, Dioxins
3	Site 4	CSA Container Storage Area	Pesticides, VOCs, Metals
5	Site 5A	Sump/Drainage Swale	VOCs, TPH
6	Site 5B	Waste Oil Tank @ Bldg 816C	VOCs, TPH
7	Site 5C	Railroad Car Service Pits	VOCs
8	Site 5D	Storm Drain Bldg 816/916	Pesticides, Metals, VOCs, TPH
9	Site 5E	Waste Treatment Plant	DDT, Metals, TPH
10	Site 5F	Sludge Drying Beds	TPH, DDT, PCBs, VOCs, Metals
11	Site 5G	Waste Water Treatment Drainage	Pesticides, Metals
12	Site 5H	Inactive Pesticide Storage	Pesticides, Metals
13	Site 5I	Storm Drain from Bldg 816B	Pesticides, TPH, Metals
14	Site 6	Former Wash Rack/Associated Storm Drain	TPH, Metals, Pesticides
15	Site 7	North Railroad Yard	DDT, Metals
16	Site 8	South Railroad Yard	PCBs, VOCs, Metals
17	Site 9	Buried Drainage Channel	Pesticides, VOCs, Metals
18	Site 16	Abandoned Channel	PCBs, VOCs, Metals
19	Site 19	Construction Debris (?)	Debris
20	Site 30	Spill Area	TPH, VOCs
21	Site 33	Defense Stockpile Areas	Metals, Pesticides
22	Site 37	Landfill Area	Metals, Pesticides
23	Site 38	Landfill Area	VOCs, Metals, Pesticides
24	Site 39	Landfill Area	VOCs, Metals, Pesticides
25	Site 43	Storage Areas	Metals, VOCs, Pesticides
26	Site 45	Storage Area	DDT, PCBs
27	Site 47	Construction Storage Area	Metals, PAHs



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28	Site	48	Former Solvent Tank	TPH, VOCs
29	Site	49	Former UST/Sump @ Bldg 816D	VOCs, TPH
30	Site	50	Battery Storage Area	TPHm, Pb
31	IAS	1	Dredge Material Disposal Area	Metals
32	IAS	2	Dredge Material Disposal Area	Pesticides, TPH, Metals
33	IAS	03/04	Disposal Trench	Dioxins/Furans, Pesticides, PCBs, Metals, VOCs
34	IAS	5	Mill Burner	Metals, Pesticides, Radium
35	IAS	07	Landfill Area	Pesticides, VOCs, Metals
36	IAS	8	Clothing Disposal Pit	Unknown/Not investigated
37	IAS	9	Treated Dirt Road	TPH, Pesticides, Metals
38	IAS	10	Former Concrete Plant	TPH, Pesticides, Metals
39	IAS	11	Disposal Trench/Landfill	VOCs, Metals, PCBs
40	IAS	12	Wet Garbage/Kitchen Waste	Pesticides, PCBs, Metals
41	IAS	13	Disposal Trench/Landfill	Pesticides, Dioxins, TPH, Metals, VOCs
42	IAS	14	Disposal Trench/Landfill	Pesticides, VOCs, Metals
43	IAS	15	Tank Pit	Pesticides, VOCs
44	IAS	16	Landfill Area	Pesticides, VOCs, Metals

Underground Storage Tank/Oil-Water Separators

Site Designation	Parcel Number	Contamination
UST 517-1,2	92	Petroleum Hydrocarbons
UST 817B-1, 2, 3, 4	182	Petroleum Hydrocarbons
UST16-1, 2, 3	120	Petroleum Hydrocarbons
UST 605-1	5	Petroleum Hydrocarbons
UST 916B-1,2	181	Petroleum Hydrocarbons
OWS 508-1	7	Petroleum Hydrocarbons



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